

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**





74-1812

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

No. 74-1812

ELENA CLASS, et al	:	Appeal from the United
	:	States District Court for
PLAINTIFFS - APPELLEES	:	the District of Connecticut
VS.	:	
NICHOLAS NORTON, INDIVIDUALLY :	:	
AND AS COMMISSIONER OF WELFARE,	:	
STATE OF CONNECTICUT	:	
DEFENDANT - APPELLANT	:	<u>The Honorable</u> M. Joseph Blumenfeld, District Judge

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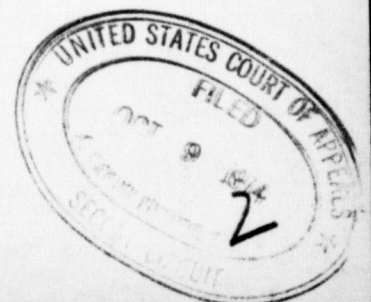
BRIEF OF PLAINTIFFS - APPELLEES

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- II. The Commissioner cannot satisfy the requirements for relief from judgment under Rule 60(b)(5).
  - A. The circumstances of the case have not changed significantly since the original judgment was entered.
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    2. The policies set out in the amended HEW regulations do not constitute "changed circumstances" under Rule 60(b)(5) in the present posture of this case.



3. The harm which the original judgment was designed to extinguish remains substantial.

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ISSUES PRESENTED

1. Whether the District Court properly exercised its discretion in finding that the Commissioner was precluded by his "unclean hands" from seeking relief under Rule 60 (b) (5) .

2. Whether the Commissioner can make a clear showing that he is entitled to equitable relief from judgment under Rule 60 (b) (5) when the circumstances of the case have not changed significantly since the original judgment was entered and when the movant is suffering no hardship.



## STATEMENT OF THE CASE

### Nature of the Case

On December 1, 1971, plaintiffs-appellees, applicants for Aid to Families with Dependent Children (hereinafter "AFDC"), instituted this class action to compel the defendant-appellant, the Commissioner of Welfare for the State of Connecticut (hereinafter "Commissioner") to comply with the "reasonable promptness" standard of 42 U.S.C. §602 (a)(10) by making eligibility determinations within thirty days from the date of application and to make assistance payments effective from the date of application. (R.3, Complaint). The Commissioner argued that administrative reasons justified the delays in making eligibility determinations (A. 9) and contended that administrative convenience also justified different effective dates of assistance for recipients. (A. 12). The Department of Health, Education and Welfare (hereafter "HEW") submitted an amicus curiae brief in which it took the position that the different classifications for the effective date of assistance were permissible because they "arose from the history of the program." (A.11).

On June 16, 1972, the District Court filed its Memorandum of Decision. Finding that "[L]ax administration provides no justification for delay...", the Court ordered the Commissioner to determine the eligibility of applicants for AFDC benefits within thirty days from the date of application for assistance, in compliance with 45 C.F.R. §206.10 (a)(3). (A.10). In cases where no determination of

eligibility was made within the thirty-day period, the Commissioner was ordered to presume that the applicant was eligible and mail assistance checks accordingly. (A. 10).

The Court also rejected HEW's position and held that the difference in treatment of those who apply for assistance on the same date was lacking in rational justification. (A. 12). Since this policy of the Commissioner's resulted in the inequitable treatment of plaintiffs, it violated 45 C.F.R. §233.20 (a)(1) and the Equal Protection Clause of the Fourteenth Amendment. (A. 12). The Court ordered the Commissioner to make AFDC assistance effective from a date no later than the date of application for assistance, whatever the date of determination of eligibility. (A. 12). An Addendum to the Memorandum of Decision was filed on June 22, 1972, in which the Commissioner was further ordered to submit bi-monthly reports detailing the processing of AFDC applications and to pay AFDC benefits to all applicants from the date of application only to the extent that emergency town welfare benefits received by the recipients were less than the AFDC benefits to which they were entitled. (A. 14).

Finally, in the Judgment, dated June 26, 1972, Judge Blumenfeld ordered the Commissioner to process AFDC applications within thirty days in conformity with 45 C.F.R. §206.10 (a)(3), and permanently enjoined the Commissioner from enforcing state policy which provided for different effective dates of assistance for AFDC recipients whose eligibility was determined in a



month subsequent to the month of application or more than thirty days after the date of application. (A. 15-16).

On September 4, 1973, the Commissioner filed a Motion for Relief from Judgment (A. 17), pursuant to Rule 60(b)(5) and (6), F.R.Civ. P., seeking a relaxation of the final orders of the District Court on the basis of amended federal regulations promulgated by HEW on August 15, 1973, and which became effective on October 15, 1973. See, 39 Fed. Reg. 22009. Specifically, the Commissioner requested the Court to modify its outstanding orders to allow the State Welfare Department forty-five rather than thirty days within which to make determinations of eligibility for AFDC applications as permitted in 45 C.F.R. §206.10(a)(3)(1), as amended. The Commissioner also requested modification of the Court's order respecting the effective date of assistance based on 45 C.F.R. §206.10(a)(6)(1)(A)(2), as amended, which allows AFDC assistance be made effective as late as the date of authorization of payment or thirty days from the date of application, whichever is earlier. HEW continues to provide reimbursement for payments commencing as early as the first of the month in which the recipient made application for assistance. 45 C.F.R. §206.10(a)(6)(1)(B).

#### Hearing Below

A hearing was held on the Commissioner's Motion for Relief from Judgment on September 11, 1973, before Judge Blemenfeld. At the hearing the Court was advised by plaintiffs'

counsel of possible violations of its final orders of June, 1972. (R. Second S.1, Tr. of Hearing on Motion for Relief from Judgment at 11, l. 17 through 12 l. 15). These violations included substantial numbers of applications not processed within the 30-day time limit and the promulgation of a departmental directive by the Deputy Commissioner on May 4, 1973, which required AFDC recipients to demonstrate "unmet need" in order to receive the benefits to which they were entitled and which set an arbitrary limit on the amount of benefits which would be paid. (R. 15(0), Appendix to Motion for Contempt (Directive)).

On January 4, 1974, plaintiffs-appellees filed a Motion for Contempt and Other Relief against the Commissioner in the District Court alleging systematic violations of its final orders entered in June, 1972. (R. 14, Motion for Contempt). Specifically, plaintiffs claimed, inter alia, that the Commissioner was in substantial and widespread non-compliance with the Court's order of June 16, 1972 requiring him to determine eligibility for AFDC assistance within thirty days from the date of application. This non-compliance was evidenced in part by the Commissioner's own bi-monthly reports ordered by the Court as a means of ascertaining the department's effectiveness in processing AFDC applications within thirty days. (R. 15 (D-I, Appendix to Motion for Contempt (Reports)) .

Plaintiffs further claimed that the Commissioner had vitiated the District Court's orders that AFDC assistance be made effective from the date of application for assistance, regardless of the



date of the determination of eligibility by promulgating a directive on May 4, 1973, which required recipients to demonstrate "unmet needs" in order to receive the benefits to which they were entitled, and which established an arbitrary limit on the amount of benefits which would be paid. (R. 15(0), Appendix to Motion for Contempt (Directive)).

A hearing was held on plaintiffs' Motion for Contempt and Other Relief on January 10, 1974 (R. 1 and 2, Transcript) (hereafter "Tr."). The Commissioner admitted non-compliance with the Court's orders. (Tr. at 61, l. 24 through 62, l. 24). His own statistical reports revealed that over 18 per cent of all AFDC applications were not processed within the thirty-day time limit. (R. 15(D-I), Appendix to Motion for Contempt (Reports)); Class v. Norton, 376 F.Supp. 496, 498 (D. Conn. 1974)(A.20). Several categories of reasons for failure to process on time were shown to be impermissible excuses under Federal law. (Tr. at 48, l. 15 through 49, l. 10).

The director of one of the district offices testified that since the reports to the Court had ceased in July, 1973, the degree of non-compliance with the thirty-day time limit for processing applications had increased and now averaged over 35 per cent. (Tr. at 72, l. 1 through 73, l. 1; through 76, l. 10; R. Second S. 3-7, Records). Under questioning by his own counsel the official admitted that his office was not "the worst" with respect to processing applications, i.e. that other district offices in Connecticut had a greater percentage of cases that were not processed

within thirty days. (Tr. at 82, l. 3-11). The time taken to process the AFDC applications in that office of persons receiving emergency town assistance benefits in the interim, benefits "substantially less" than the AFDC benefits to which they were entitled (Tr. at 63, l. 1-3; Tr. at 92, l. 11-19), averaged 51 days. (Tr. at 89, l. 24 through 90, l. 10; R. Second S. 8-18, Records).

Nevertheless, the Commissioner's agent testified that between 2 and 10 per cent of all recipients had to demonstrate "unmet need" or the amount of their AFDC benefits, from which emergency town assistance benefits had already been deducted, would be further reduced. (Tr. at 36, l. 3 through 37, l. 10; Tr. at 59, l. 6-10). The Commissioner admitted that the directive issued by his deputy with his approval providing for such a result was "clearly in violation of the Court's order" if it so burdened a recipient. (Tr. at 31, l. 10-14).

#### Dispositions Below

Following the hearing on plaintiffs' Motion for Contempt and Other Relief and consideration of plaintiffs' affidavits (R. 15(J-N), Appendix to Motion for Contempt (Affidavits); R. 17, Supplemental Affidavits), the District Court on March 22, 1974, issued its Ruling on plaintiffs' Motion for Contempt and Other Relief. Class v. Norton, 376 F.Supp. 496 (D. Conn. 1974) (A. 19). Judge Blumenfeld found that each of plaintiffs' allegations was sustained by the record evidence and that "non-compliance has been substantial and widespread." 376 F.Supp,



at 498 (A. 20). He noted that the defendants "did not dispute this conclusion" but offered lack of administrative personnel and miscomprehension of the Court's previous orders as excuses.

The Court reiterated its original holding that "[L]ax administration provides no justification . . ." for failure to comply. 376 F.Supp., at 498 (A. 21). Judge Blumenfeld found these violations of his prior orders had been "exacerbated" by the promulgation of departmental directives\* which placed the burden upon eligible recipients to show "unmet need" and imposed an arbitrary limit on the amount of benefits which would be paid. Accordingly said directives were ordered rescinded. 376 F.Supp., at 502 (A. 28, para. (3)(c)).

The Court issued detailed orders designed to require the Commissioner to "properly implement the prior orders of [the] Court." 376 F.Supp., at 501 (A. 26). Judge Blumenfeld also awarded attorney's fees to plaintiffs' counsel for the time "necessarily expended" in bringing the Commissioner's unjustified non-compliance to the attention of the Court. 376 F.Supp., at 502-503 (A. 29-30). On April 3, 1974, the Commissioner filed his Notice of Appeal from the Ruling of March 22, 1974. (R. 19, Notice.)

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\*A second directive, dated December 4, 1973, "clarifying the original one was presented by defendant at the hearing on plaintiffs' Motion for Contempt and Other Relief, but does not appear in the Record.

On May 13, 1974, following the submission of supplemental briefs by both parties on the Impact of the Supreme Court's decision in Edelman v. Jordan, 415 U.S. 651, reh. denied, \_\_\_\_ U.S. \_\_\_\_, 40 L.Ed. 2d 777 (1974), the District Court filed its Ruling on Defendant Norton's Motion for Relief from Judgment. Class v. Norton, 376 F.Supp. 503 (D. Conn. 1974) (A. 31). The Court held that the changes in the HEW regulations do not constitute 'extraordinary circumstances' required for relief under Rule 60 (b) (6). 376 F. Supp., at 505 (A. 34). The Court also held that the Commissioner was precluded from seeking relief under Rule 60 (b) (5) because of his inequitable posture.

The Court found "extensive non-compliance" with its previous orders to be a "significant consideration" in determining whether to grant relief. 376 F.Supp., at 505 (A. 33). Since the non-compliance was found to have been "inexcusable and unjustified," the Commissioner is precluded from obtaining equitable relief because "[his] own hands are so unclean." 376 F.Supp., at 505-506 (A. 34). Judge Blumenfeld also found that under Rule 60 (b) (5) a change in circumstances which would render continued enforcement of his prior orders "inequitable" has not yet occurred, since compliance that had not been "achieved" could not be "continued." 376 F.Supp., at 505 (A.34). The continued assertion by the Commissioner of unacceptable reasons for his non-compliance made the Court "loathe" to consider what adversity would result to the plaintiffs if the modification were granted. 376 F.Supp., at 506 (A. 35).



Finally, Judge Blumenfeld ruled that the recent decision in Edelman v. Jordan, supra, did not mandate a different result. The only two aspects of the District Court's prior orders from which the Commissioner sought relief, those requiring eligibility determinations to be made within thirty days from the date of application and making AFDC assistance effective from a date no later than the date of application, "constituted prospective injunctive relief to the plaintiffs," expressly permitted under Edelman. 376 F.Supp., at 506 (A. 36) (emphasis in original). Accordingly, the Commissioner's Motion for Relief from Judgment was denied by the Court.

On June 6, 1974, the Commissioner's filed his Notice of Appeal from the Ruling of May 13, 1974.

#### Court of Appeals Proceedings

Subsequent to filing his Notice of Appeal from the Ruling of May 13, 1974, the Commissioner moved to consolidate this appeal with his appeal from the Ruling by the District Court on plaintiffs' Motion for Contempt and Other Relief, Court of Appeals No. 74-1702. Judge Mansfield denied the motion to consolidate the two appeals on June 27, 1974.

Thereafter, on September 9, 1974, oral argument in No. 74-1702 was heard before a panel of this Court (Smith, C.J., Timbers, C.J., and Gurfein, D.J.).

## ARCUMENT

### SUMMARY OF ARGUMENT

The District Court properly exercised its discretion in denying the Commissioner's motion for relief from judgment under Rule 60(b)(5). Before the District Court could determine the merits of his claim for relief, the Commissioner had to bring his claim within the context of the subdivision of the rule. The Commissioner's continuing non-compliance with the very orders from which he sought relief barred him from seeking the exercise of the Court's equitable powers on his behalf. The persistent failure of the Commissioner to rectify his unjustified disobedience, expecially in view of his power and duty as a public official to do so, requires that this Court uphold the District Court's determination.

Assuming arguendo that consideration of the merits of the Commissioner's claim were not precluded by his "unclean hands", the Commissioner cannot demonstrate that he is entitled to relief from judgment due to significantly changed circumstances. The Commissioner cannot relitigate the issue of whether HEW standards on the effective date of assistance should control since this matter was decided adversely to him in the original judgment.

Moreover, in the present posture of this case, the policies set out in the amended HEW regulations do not constitute



"changed circumstances." One provision merely extends the permissible time period for processing applications, a minor change in one sense, with which the Court's order is fully consistent, but one whose implementation could exacerbate currently delayed determinations. The other provision actually imposes a stricter requirement of the effective date of assistance than that which existed under past regulations, but one which is still inconsistent with court-ordered equal treatment for recipients.

Finally, although the Commissioner has failed to present any verified new hardship in support of his request for relief, the record demonstrates that the harm to plaintiff welfare recipients which the original decree was designed to end remains substantial. The relief the Commissioner seeks would not further the goals of the original orders, but allow him to escape their impact.

THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING THE MOTION FOR RELIEF FROM JUDGMENT.

I. The Commissioner was precluded by his "unclean hands" from seeking relief under Rule 60(b)(5).

A motion for relief from judgment under Rule 60 (b) is addressed to the sound discretion of the district court and the determination of the district court "will not be set aside unless there has been a clear abuse of [that] discretion." Hines v. Seaboard Air Line R.R. Co., 341 F.2d 229 (2d Cir. 1965), citing Cucurillo v. Schulte, Bruns Schiff Gesellschaft, M.B.H., 324 F.2d 234 (2d Cir. 1963). See also, Parker v. Broadcast Music Inc., 289 F.2d 313 (2d Cir. 1961). The appropriate considerations of the district court in the exercise of its discretion depend upon the particular clause of Rule 60(b) under which the motion for relief from judgment falls. The moving party must bring his claim for relief within the context of a specific clause of Rule 60(b) before the Court can exercise its discretion with respect to the claim. Rinieri v. News Syndicate Company, 385 F.2d 818 (2d Cir. 1967). If the factors necessary to bring the movant within a clause are absent, the district court cannot reach the point of exercising its discretion and the appellate court is similarly restricted in its review.

In addressing a motion under Rule 60(b), it is proper for the district court to take into account all the circumstances



of the case. In re Campbell's petition, 326 F.2d 101 (2d Cir. 1964). Because the movant is seeking equitable relief, the presence or absence of "unclean hands" on his part is a significant factor. Frad v. Columbia National Life Insurance Company, 190 F.2d 22, 26(2d Cir. 1951), cert. denied 342 U.S. 904 (1952). The significance of "unclean hands" is especially great when the moving party is attempting to bring his claim within the context of subdivision (b)(5)\* which permits relief when "it is no longer equitable that the judgment should have prospective application." Rule 60(b)(5), F.R.Civ. P. (emphasis supplied).

The Court below determined that the Commissioner was precluded from relief under Rule 60(b)(5) by the circumstances of the case. Class v. Norton, 376 F.Supp. 503, 505 (D. Conn. 1974)(A. 34). The Commissioner was found to be in "inexcusable and unjustified " non-compliance with the very orders from which

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\*The movant in this case originally asked for relief from judgment "pursuant to Rule 60(b)(5) and (6)" and argued that his situation was covered under both clauses. (A. 17; Defendant's Memorandum of Law in Support of his Motion for Relief from Judgment, dated August 30, 1973). The District Court considered the Commissioner's claim under clause (b)(6) and held that the grounds for relief presented by the Commissioner did not bring him within the purview of the clause which requires "extraordinary circumstances." 376 F.Supp., at 505 (A. 34). The Commissioner has abandoned his reliance on clause (b)(6), arguing that "there is no need to consider whether a change in HEW regulations constituted the 'extraordinary circumstances' to justify relief under clause (6) of the Rule." Brief of Appellant, at 15-16. Thus, the issue on this appeal is whether the District Court clearly abused its discretion in denying the Motion for Relief from Judgment under Rule 60(b)(5).

he sought relief. Under equitable principles, the Court held, the Commissioner "cannot seek relief" on the merits of his claim while his own hands are "so unclean." 376 F.Supp., at 505-506 (A. 34).

The Commissioner contends that had his Motion for Relief from Judgment been decided before the plaintiffs' Motion for Contempt and other Relief, his non-compliance would not have yet been demonstrated to the Court, and therefore he would not have been precluded from relief by his "unclean hands."

Brief of Appellant, at 6 . However, the Commissioner's own reports establish substantial non-compliance with respect to one provision of the prior order from which he seeks relief, the 30-day time limit for processing AFDC applications. These reports had been submitted to the Court prior to the time the Commissioner brought his motion for relief from judgment.

What the hearing on plaintiffs' Motion for Contempt and other Relief did demonstrate was a pattern of increasing non-compliance with this provision of the Court's decree after the reports ceased in July, 1973. By December, 1973, the percentage of AFDC applications not processed within 30 days had grown from about 20 per cent to almost 40 per cent at one of the Commissioner's district offices, an office which was not, by the admission of the Commissioner's own agent, "the worst." (R. 1 and 2, Tr. of the Hearing on Plaintiffs' Motion for Contempt and other Relief at 72, 1.1 to 73, 1.1; 75, 1.7 to 76, 1.10).



Testimony also established that the Commissioner's performance was deficient even when judged by a 45-day standard, the average processing time for cases from one office being 51 days. (R. 1 and 2, Tr. of the Hearing on Plaintiff's Motion for Contempt and Other Relief at 89, 1.24 to 90, 1.10). C.f., Brief of Appellant, at 6.

It was at the hearing on the Commissioner's Motion for Relief from Judgment that the Commissioner's direct violation of the other aspect of the Court's order from which he seeks relief was revealed for the first time. Only three months prior to moving for relief from the order, the Commissioner through his deputy promulgated a non-public departmental directive which burdened 2 to 10 per cent of all AFDC recipients with proving "unmet needs" before they could receive their assistance from the date of their applications as the Court had decreed. (R. Second S.1; Tr. at 11, 1. 17 to 12, 1. 15). This policy continued until, in its Ruling on plaintiffs' Motion for Contempt and Other Relief, the Court found this directive "violative" of its prior orders and required its rescission. 376 F.Supp. 496, 500, 502 (A. 25,28 para. (3)(c)).

Thus, in precisely the two areas in which he seeks relief the Commissioner demonstrated "widespread and substantial" non-compliance both before and after his motion was filed.\*

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\*The Commissioner was also found to be in non-compliance with the other provisions of the Court's orders, having failed to pay benefits from the date of application to all recipients whose applications were approved since the filing of the lawsuit, to implement the policy of presumptive eligibility or to submit adequate reports. 376 F.Supp., at 498-500. (A. 20-25).

Nevertheless, the Commissioner contends that his non-compliance is not a "proper criterion" for determining whether relief should be granted from the prospective application of the injunction. Brief of Appellant, at 8-15. This Court, assuming parties' compliance with court decrees, has equated "prospective" application with "continued" application. Schildhaus v. Moe, 335 F.2d 529 (2d Cir. 1964). As Judge Blumenfeld succinctly put it in his Ruling on the Commissioner's Motion, since compliance with his orders "has not yet been achieved", the Commissioner "cannot seriously contend" that he seeks relief from their "continued" enforcement. 376 F.Supp., at 505 (A. 34).

Moreover, it would have been irresponsible for the Court to ignore the experience of the past in determining what would be equitable for the future. When this case was originally brought, the Commissioner had claimed lack of sufficient personnel and problems with administrative procedures as excuses for not obeying federal law. In answer to this argument, the Court in its Order of June 16, 1972, specifically held: "Lax administration provides no justification for . . . delay in determining eligibility." (A. 10). At the hearing on the Motion for Contempt and other Relief, the Commissioner persisted in offering the same defenses of insufficient personnel and inadequate administrative procedures as excuses for his continuing non-compliance with the now court-ordered requirements.



Yet another consideration is the public nature of this suit. This is not an instance of two private parties litigating their personal interests. At stake here is the issue of whether the rights of the plaintiffs to subsistence benefits which they are entitled to receive without delay under the Constitution and laws of the United States shall be disturbed. A higher standard of equity applies where such public matters are concerned. Precision Instrument Manufacturing Company vs. Automotive Maintenance Machinery Company, 324 U.S. 806 (1945).

In Precision, the Supreme Court emphasized that the doctrine of "unclean hands" is fundamental to the historical concept of the court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith.

324 U.S., at 814. The Court went on to state:

"Moreover, where a suit in equity concerns the public interest as well as the private interests of litigants, this doctrine assumes even wider and more significant proportions. For if an equity court properly uses the maxim to withhold its assistance in such a case it not only prevents a wrongdoer from enjoying the fruits of his transgression but averts an injury to the public."

Precision, supra, at 815.

Just as in Precision where the possession and assertion of patent rights were considered issues of public importance requiring a higher standard of equity, so the provision of benefits to eligible recipients by public officials requires a higher standard of conduct on the part of those officials. The Commissioner's conduct herein clearly does not meet such a standard.

The Court found that non-compliance remained unjustified by these excuses and was compounded by the failure of the Commissioner and his administrative staff to clearly enunciate and enforce policy. 376 F.Supp., at 498, 501 (A. 25).

In weighing the claim that prospective enforcement of the orders would be "inequitable", the Court properly considered not only the Commissioner's continuing non-compliance but also the persistence of reasons for that non-compliance which are within the power of the Commissioner to correct. C.f. Tobin v. Alma Mills, 92 F.Supp. 728 (W.D.S.C. 1950), modified and aff'd., 192 F.2d 133(4th Cir. 1951), cert. denied 343 U.S. 935 (1952), cited by Appellant in his Brief, at 10, where the Court found the non-compliance was due to the defendants' employees acting against his direction. Given the Commissioner's past record, the Court had no reasonable basis to conclude that there would be bona fide efforts to comply with legal requirements in the future if the injunction were modified. Indeed, Judge Blumenfeld was

"loath to speculate on the adversity to which welfare applicants might be subjected if the 30-day requirement were relaxed to 45 days or if the Welfare Department were not compelled to make assistance effective from the date of application rather than from the date of determination of eligibility."

376 F.Supp., at 506 (A. 35).

The Commissioner's recitation of his rejected excuses to this Court cannot advance the equity of his cause. See Brief of Appellant, at 9-10.



Due to these circumstances, the Commissioner failed to bring his claim for relief within the District Court's consideration under Rule 60(b)(5). He was excluded from the operation of the equitable rule by his own inequitable posture. Since the threshold requirements were not met, the District Court did not reach the point of exercising its discretion on the merits of the claim. Rinieri, supra.

Appellate review is therefore restricted to the question of whether the District Court clearly abused its discretion by finding that the Commissioner was precluded from seeking relief under Rule 60(b)(5) because of his "unclean hands." Plaintiffs-appellees submit that the Commissioner has presented nothing to this Court, much less made a "clear and convincing" showing, to establish that the determination of Judge Blumenfeld should be overturned. If this Court should conclude, however, that consideration of the Commissioner's claim is not precluded by his inequitable posture, it should remand the case to the District Court for the exercise of its discretion according to the factors usually operative in the determination of Rule 60 (b)(5) motions.

II. The Commissioner cannot satisfy the requirements for relief from judgment under Rule 60(b)(5)

Were the Commissioner's inability to seek equitable relief due to his "unclean hands", which plaintiffs-appellees contend is dispositive of this appeal, to be disregarded, the Commissioner still cannot demonstrate that he would be entitled to relief

according to the criteria relevant for determination of Rule 60(b)(5) motions. The controlling factors in deciding a motion for relief from judgment under Rule 60(b)(5) were articulated by Mr. Justice (then Judge) Blackmun in Humble Oil and Refining Company v. American Oil Company, 405 F. 2d 803 (8 Cir. 1969), cert. denied, 395 U.S. 905 (1969). Basing his analysis on United States v. Swift, 286 U.S. 106 (1932), and subsequent Supreme Court decisions on the Rule, Justice Blackmun concluded

"...that modification is only cautiously to be granted; that some change is not enough; that the dangers which the decree was meant to foreclose must almost have disappeared; that hardship and oppression, extreme and unexpected, are significant; and that the movants' task is to provide close to an unanswerable case. To repeat: caution, substantial change, unforeseenness, oppressive hardship, and a clear showing are the requirements."

Humble Oil, supra, at 813.

The movant must satisfy each of these factors to justify the exercise of the court's discretion on his behalf. The Commissioner has satisfied none of them.

- A. The circumstances of the case have not changed significantly since the original judgment was entered.
  1. The issue of whether HEW standards on the effective date of assistance should control was decided in the original judgment and cannot be relitigated in a motion under Rule 60(b)(5).

Under the first criterion, the movant has an affirmative duty to prove that a significant change has occurred which makes the



outstanding relief no longer equitable. The movant cannot use a Rule 60(b)(5) motion as an opportunity to relitigate matters decided by the original judgment. The court is not "at liberty to revise under the guise of readjusting."

United States v. Swift, 286 U.S. 106, 119 (1932).

This Court has had occasion to consider the significance of a lack of changed circumstances on the determination of a motion under Rule 60(b)(5). In Schildhaus v. Moe, 335 F.2d 529 (2d Cir. 1964), the district court had denied the motion, finding that the facts at the time of the motion for relief from judgment were no different than when the court made its initial determination a year earlier. This Court agreed and, in affirming the lower court's denial of the motion, stated:

"the rule is not to be read without emphasis on the important words "no longer"; assuming that the propriety of the injunction as issued has passed beyond debate, it refers to some change in conditions that makes continued enforcement inequitable."

Schildhaus, supra, at 530.

This limitation on the inquiry of both the District Court and this Court precludes consideration of the Commissioner's argument that "the District Court improperly substituted its own judgment for that of HEW " when it refused to change the date of entitlement of AFDC benefits from the date of application to 30 days thereafter. Appellant's Br. at 17-19 . In its Ruling on the Motion for Relief from Judgment, the District Court did not, of course, reach the issue of the propriety of

the revised HEW's standards on the effective date(s) of assistance.\* However, the Court in its original judgment rejected a similar standard offered by the Commissioner which was "in accord with HEW's regulations and approved in the amicus brief which was submitted by HEW in this case."

Appellant's Br. at 3, n.1 . The Court required instead that assistance be provided to all AFDC recipients from the date of application, a standard which the Court found to be mandated by statutory and Constitutional requirements of equal treatment. (A. at 10-13, 16).

Thus, the Commissioner's argument of improper judicial substitution for agency expertise is an attempt to relitigate by his motion for post-judgment relief under Rule 60(b)(5), and by this appeal from its denial, a contention which he inexcusably failed to raise by direct appeal after the issue was decided against him in the original judgment. "This is not a proper use of Rule 60(b)(5)," Friedman v. Wilson Freight Forwarding Co. v. Steinman, 320 F.2d 244(3rd Cir. 1963), and the movant could not satisfy the "changed circumstances" requirement with this argument in the district court. It is equally "well settled" that a denial "does not bring up for

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\*The District Court also did not reach the issue of whether a 45 day period to process applications satisfies the statutory requirement of "reasonable promptness" and therefore never approached the point of replacing HEW's opinion with its own on this matter.



review on appeal the order sought to be modified." Hines,  
supra, at 232. A claim of error in the original judgment,  
which the Commissioner might have raised on appeal of that  
judgment, is not now open for consideration by this Court.  
Ackerman v. U.S., 340 U.S. 193 (1950); Wagner v. U.S., 316  
F.2d 871, 872(2d Cir. 1973); Lubben v. Selective Service  
System Local Board No. 27, 453 F.2d 645(1st Cir. 1972);  
9 J. Moore, Federal Practice §60.30[1], at 417(2d ed. 1972).

2. The policies set out in the amended HEW regulations do not constitute "changed circumstances" under Rule 60(b)(5) in the present posture of this case.

The Commissioner argues that amended HEW regulations constitute "changed circumstances" which entitle him to relief under Rule 60 (b)(5). One provision merely extends the permissible time period for processing applications, a minor change in one sense, with which the Court's order is fully consistent, but one whose implementation could exacerbate currently delayed determinations. The other provision actually imposes a stricter requirement of the effective date of assistance than that which existed under past regulations, but one which is still inconsistent with court-ordered equal treatment for recipients.

The first newly revised provision of HEW regulation 45 C.F.R. §206.10 extends from 30 to 45 days the maximum period within which eligibility for AFDC must be determined. 45 C.F.R. §206.10 (a) (3)(1). This regulation does not set a mandatory policy of processing applications in 45 days, but merely permits a longer time period. The Commissioner's argument fails to recognize the difference between an order of the District Court that eligibility for AFDC must be determined within 30 days and a federal regulation increasing the outer time limit for processing applications from 30 to 45 days. The Court's requirement of a shorter time period is fully consistent with the HEW policy.

Moreover, this revision is a minor change in the system of the provision of AFDC benefits. It is not a wholesale revision in the procedures for granting assistance. This factor dis-



tinguishes the circumstances of this case from those present in Harrell v. Harder, 369 F. Supp. 810 (D. Conn. 1974), cited by Appellant in his Brief, at 19 .

In Harrell, Judge Blumenfeld was presented with a motion under Rule 60(b)(5) to modify his orders on notice and hearing requirements in view of new HEW regulations governing the procedures. The regulations instituted a completely new notice and hearing system, including the introduction of local "evidentiary hearings" and the entire elimination of the prior notice requirement in a set of defined situations. After careful scrutiny for constitutional imperfections, the Court approved the comprehensive revision of notice and hearing procedures and allowed it to replace the system reflected in its prior orders. The extension of the permissible time period for processing applications in this case presents no such systemic change.

Plaintiffs-appellees' position that the two requirements are not in conflict is supported by another provision of the same regulation which continues to provide that aid "shall be furnished promptly to eligible individuals without any delay attributable to the agency's administrative process... ." 45 C.F.R. §206.10(a)(5). The District Court relied on this section in determining that, in view of the Commissioner's present non-compliance with the 30 day time limit, it would be inequitable to extend the time limit as permitted by the revised regulation. (A. 35). The Court must properly be con-

cerned not only with the regulations as stated, but also with the effect of their implementation. Sullivan v. Houston Independent School District, 475 F.2d 1071(5th Cir., 1973), cert. denied 414 U.S. 1032 (1974).

In Sullivan, the defendant school district moved under Rule 60(b)(5) to vacate an injunction concerning the control of student publications on the grounds that the district had literally complied with the court's decree by promulgating new regulations. The district court denied the motion, and the Court of Appeals affirmed the denial. Noting that the decision was within the discretion of the trial court, the Court of Appeals agreed that

"the original injunction dealt not only with the promulgation of regulations, but also with their enforcement. The school district has failed to show that continuation of the 1969 injunction is unnecessary to insure that the rules will not be unconstitutionally applied in the future."

Sullivan, supra, at 1078.

Similarly in this case, although the extended time limit for processing applications might be valid per se, it is the questionable adherence to it by the Commissioner given his past conduct which makes its implementation "inequitable" at this time. Non-compliance with the more lenient time limits might mean average delays of 60 to 90 days, instead of the current 51 days. It is this issue of the operation of the revised regulation in the present circumstances which distinguishes this case from Harrell v. Harder, supra, and Stovall v. Harden, Civ. No. 15243 (N.D.Ga., March 21, 1974),



cited by the Appellant at 15, in which the District Court permitted the injunction-which had been complied with-to be modified to permit 45 days for processing AFDC applications.

The Commissioner also claims that the Supreme Court in Edelman v. Jordan, 415 U.S. 651, reh. denied, \_\_\_ U.S. \_\_\_, 40 L.E. 2d 777 (1974), expressly approved the revised HEW regulation 45 C.F.R. §206.10(a)(3) extending the time period for processing AFDC applications from 30 to 45 days. Brief of Appellant, at 20. This contention is erroneous, but even if correct would not be grounds for relief from judgment under Rule 60(b)(5).

In Edelman, the District Court issued a permanent injunction requiring compliance with the federal time limits for processing applications of the aged, blind and disabled (hereafter "AABD") contained in 45 C.F.R. §206.10(a)(3) and also ordered the state officials to release and remit AABD benefits wrongfully withheld. The Court of Appeals for the Seventh Circuit affirmed in both respects.

The Supreme Court reversed only that "portion of the Court of Appeals decision which affirmed the District Court's order that retroactive benefits be paid by the Illinois State officials," and affirmed that part of the Court of Appeals' holding that "these [time] requirements, binding on state welfare officials, are an appropriate interpretation of the Congressional mandate of 'reasonable promptness.'" Edelman, supra,

at 659 n. 8, citing the Court of Appeals' decision at 472 F. 2d 985, 996 (1973).

However, it was after the lower court decisions in Edelman were rendered that the relevant HEW regulation was revised to provide for an enlarged time period for processing AABD applications (from 30 days for the aged and blind and 45 days for the disabled, to 45 and 60 days respectively). The Supreme Court merely reproduced the regulation in its current form. Edelman, supra, at 654, n. 3. This reproduction of the modified regulation, unconnected with the affirmance of the lower courts' decisions that the time limits set out in the previous regulation were an "appropriate interpretation of the Congressional mandate of 'reasonable promptness,'" cannot be taken as establishing that the new time periods are similarly proper.

Even if the Edelman Court can be taken as having approved the modified HEW regulation, despite its express affirmance of the lower court to the contrary, this would be "a change in the judicial view of the applicable law" after a final judgment in this case, which is not a suitable ground for relief from judgment under F.R.Civ. P. 60(b). United States v. Polites, 24 F.R.D. 401, 404 (E.D. Mich. 1958), aff'd, 272 F.2d 709 (6th Cir. 1959), aff'd. sub nom., Polites v. United States, 364 U.S. 426 (1960); Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645, 650 (1st Cir., 1972). C.f.



System Federation No. 91 v. Wright, 364 U.S. 642 (1961), relied on by the Commissioner in his Brief, at 11 through 15, which concerned a change in statutory law.

The Commissioner also misconceives the import of the other amended provision which specifies that "assistance shall begin no later than the date of authorization of payment or 30 days from the receipt of a signed and completed application form, whichever is earlier." 45 C.F.R. §206.10(a)(6) (emphasis supplied). Prior to this revision, the state was permitted to pay from the date of authorization. 45 C.F.R. §206.10 (a)(6)(i) (a copy of the former regulation is attached hereto as Appendix "A"). Read in conjunction with §206.10 (a)(3) providing for eligibility determinations within 30 days, one could conclude that assistance must begin within 30 days. However, the section could be interpreted to require payment from the authorization date even if that date was beyond 30 days from the date of application.

In contrast to the other revised provision extending the processing time period, here HEW has actually decreased the outer perimeter by providing that assistance shall begin at the date of authorization, but in no circumstances later than 30 days, whichever comes first. If the authorization occurs before 30 days, assistance must begin then. The state

does not have the option, in the sense of "choice," of when to begin payments, as the Commissioner originally contended.\*

Although it is commendable that HEW has seen fit to tighten the guidelines for granting assistance in its newly revised regulations, its policy still presents the same problem that concerned the District Court in its original decision. Applicants would still be granted assistance as of different time periods from the dates of their application depending upon the speed of the administrative process. It is this outcome which the Court held inequitable in its original judgment, and nothing in the new regulation would change those circumstances.

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\*In his Supplemental Brief in Support of his Motion for Relief from Judgment filed April 15, 1974, the Commissioner finally conceded that the position that he was permitted under the revised regulation to "choose" to pay all applicants from the 30th day after application was incorrect.



3. The harm which the original judgment was designed to extinguish remains substantial.

In United States v. Swift, 286 U.S. 106, 119-120 (1932), the Supreme Court expressed the inquiry with respect to changed circumstances as whether "the changes are so important that dangers, once substantial, have become attenuated to a shadow." Thus the changed circumstances must not only cause inequity to the movant, but must make the ordered relief no longer essential to the beneficiaries of the original decree . In United States v. United Shoe Machinery Corp., 391 U.S. 244 (1968), Justice Fortas writing for a unanimous Court interpreted the decision in Swift as holding:

"that [a decree] may not be changed in the interests of the defendant if the purposes of the litigation as incorporated in the decree have not been fully acheived."

United Shoe, supra, at 248.

With respect to his request that the time-limit for processing AFDC applications be extended from 30 to 45 days based on a modified HEW regulation, the Commissioner cannot demonstrate that the dangers to plaintiffs which the decree was meant to foreclose have almost disappeared. Rather, as the Court noted in its Ruling, the Commissioner's own reports show non-compliance averaging almost 20 per cent over a one-year period. And at the hearing on plaintiffs' Motion for Contempt and other Relief, the Commissioner's employee testified that since the reports ceased in June, 1973, the degree of non-compliance steadily

increased until, by December, 1973, it reached almost 40% in one district office which admittedly was not "the worst."

376 F.Supp., at 498 (A. 20-21). Moreover, at the same hearing, there was undisputed testimony that the average length of time to process an application at the district office was 51 days, a period in excess of the new standard the Commissioner would have the Court adopt, as well as in violation of the present court-ordered standard.

The harm meant to be corrected by the provision of the original decree requiring assistance payments effective from the date of application also persists. Although the Commissioner's directive burdening recipients to show "unmet needs" in order to receive their full entitlements has been rescinded as the Court ordered, the Commissioner has refused to restore the benefits wrongfully withheld under the illegal policy to the eligible recipients. Moreover, the relief which the Commissioner seeks would constitute a return to the exact policy of arbitrary dates of entitlement which the original order enjoined as causing irreparable injury to the plaintiff class. As in Swift, supra, the relief the Commissioner seeks is not to achieve the purposes of the provisions of the original judgment, "but to escape their impact." United Shoe, supra, at 248.

B. The Commissioner is suffering no hardship.

The Commissioner cannot demonstrate that adherence to the original judgment causes him to suffer hardship so extreme and



unexpected as to make him "a victim of oppression." United States v. Swift, 286 U.S. 106, 120 (1932). Indeed the Commissioner suggested no hardship whatsoever in his Motion for Relief from Judgment, Memorandum of Law in Support of his Motion, or Supplemental Memorandum of Law. Only in his Additional Supplemental Memorandum of Law dated April 15, 1974, did the Commissioner first assert that he would be "prejudiced" by the order that he process applications within 30 days because of a new HEW policy withholding a portion of reimbursement for state payments to ineligible recipients. The Commissioner argued that he would be at a distinct "disadvantage" in comparison to other states and in greater jeopardy of having the withholding penalty invoked against him. The Commissioner has repeated this argument to this Court. Brief of Appellant, at 7-8.

This contention of the Commissioner's is erroneous and misleading in several respects. No evidence has been presented that the 30-day time period for determining eligibility results in a high rate of approval of ineligible applicants. There has been no showing that Connecticut's rate of approval of ineligible cases is higher than comparable states with a 45-day processing period. Most importantly, the Commissioner has submitted no evidence that any federal reimbursement has actually been lost due to a high rate of payments to ineligible recipients, much less a comparison of the amount of reimbursement lost to Connecticut with the amounts lost by other states which are not processing applications within 30 days.

Moreover, the possibility of lost reimbursement can be averted by proper administration and the hiring of sufficient staff to adequately screen applications, actions indirectly mandated by the present orders of the District Court. The District Court found, based on the testimony of the Commissioner's own agents at the hearing on plaintiffs' Motion for Contempt and other Relief, that non-compliance in processing applications resulted in part from insufficient numbers of office personnel. The Court held that this failure to assign sufficient personnel, which could not justify non-compliance with the 30-day requirement at the time of the original judgment, could not serve as a justification for continuing non-compliance. (A. 21). The Court also considered that the Commissioner's actions in maintaining insufficient staff were insupportable on fiscal grounds, noting that "[N]o departmental economies are realized in maintaining a backlog of unfinished work...." The Commissioner similarly cannot use the possibility of unfavorable financial consequences, avoidable by proper administration and the hiring of sufficient staff, to justify being relieved from his duties under Rule 60(b)(5).

The Court must also weigh the countervailing equities. The Court was "loath to speculate on the adversity to which Welfare applicants might be subjected if the 30-day requirement were relaxed to 45 days" given the present extent of non-compliance. 376 F.Supp. at 506 (A. 35). It is the members of the plaintiff class who experience extreme hardship in an economy of rising



inflation and unemployment when the provision of their benefits is delayed.

With respect to the request to change the date of entitlement from the date of application to 30 days thereafter, the Commissioner presented no evidence of any new hardship. Neither did the Commissioner contend that he was unfairly treated vis a vis the welfare department directors of other states. Perhaps this omission is due to the fact that at least eleven other states provide AFDC assistance effective the date of application or earlier.\* The only inequity involved is the suffering that would be endured by those who are eligible for subsistence benefits but would be deprived of them for some period of their entitlement if the Commissioner's request for modification were granted.

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\*Federal financial participation, or reimbursement, is available from the first day of the month in which the application is filed. 45 C.F.R. §206.10 (a)(6)(B). Like Connecticut, New York, Oregon, Utah, Iowa, Tennessee, and Hawaii grant assistance effective from the date of application. Vermont, Arizona, Kentucky, Oklahoma, and Wisconsin grant assistance effective from the first day of the month of application. (Copies of the pertinent regulations of these states are attached hereto as Appendices B-L).

45 C.F.R. §206.10 Application, determination of eligibility  
and furnishing of assistance.

(a) State plan requirements. A State plan under title I, IV-A, X, XIV, XVI, or XIX of the Social Security Act must provide that:

(6) Entitlement will begin as specified in the State plan, which

(1) for financial assistance must be no later than the date of authorization of payment and, for purposes of Federal financial participation, may be as early as the first of the month in which an application has been received and the individual meets all the eligibility conditions... .

Revised as of October, 1972



## NEW YORK

**351.8** Decision on initial eligibility and payment of assistance grants. (a) Decision on initial eligibility is the conclusion or determination reached at any point in the application process. Such decision, as approved on supervisory review, shall constitute the decision of the social services official. The decision shall be one of the following:

(1) *Accepted for assistance.* This means that eligibility has been fully established through investigation or that emergency need and presumptive eligibility has been established and authorization for assistance has been made and approved by the social services official.

(2) *Not accepted for assistance.* Applications are denied and not accepted for assistance when:

(i) In the course of the application interview the information given by the applicant establishes, without the need for further investigation, that he is ineligible.

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(ii) Ineligibility is determined in the course of or upon completion of the investigation, or if the applicant refuses to comply with any requirement essential to the determination of eligibility.

(3) *Terminations without decision.* No decision is required when:

(i) An application is withdrawn by the applicant.

(ii) The social services official documents that the applicant has died, cannot be located, or has left the district prior to the completion of the investigation.

(b) The decision to accept or deny the application shall be made as soon as the facts to support it have been established by investigation but not later than 30 days from the date of application except where the applicant requests additional time or where difficulties in verification lead to unusual delay, or for other reasons beyond the social services official's control. The applicant shall be notified in writing of the decision in accordance with department regulations. The reason for delay shall be recorded in the case record and communicated to the applicant.

(c) (1) When eligibility has been established the application shall be accepted for assistance pending the development of potential resources i.e., support from relatives, adjustment of insurance, or eligibility for benefits. It shall be the responsibility of the social services official to fully explore and develop all such resources.

(2) When eligibility has been established, payment of the regularly recurring grant shall ordinarily be made effective as of the date of application.

(3) A first payment shall be made as soon as possible but not later than within 30 days of the application.

(4) When eligibility has not been established but immediate need is determined to exist, an emergency or predetermination grant of assistance shall be made in accordance with department regulations.

### Historical Note

Sec. added, filed Aug. 30, 1973 eff. Aug. 30, 1973.

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OREGON

2310-2310.1

2300-2399 CHAPTER IV - ESTABLISHMENT OF NEED, AUTHORIZATIONS, PAYMENTS

2310 Authorization of Payments, Cont'd

Effective Dates for New and Reopened OAA, AB, AD, and ADC Grants

The effective date of the first payment of OAA, AB, AD, and ADC may be the earliest date that the A/R's eligibility was determined to exist provided the following requirements are met:

1. The Social Security grant shall not be effective for the same period covered by GA; and
2. For OAA, AD, AB, and ADC, the effective date shall not precede the date of the most recent application for the assistance category unless the A/R is a hospital or nursing home patient. When an oral application precedes the written one, the date of the oral application may be used if a written application is received within 30 days.  
  
For hospital and skilled nursing home patients, the effective date may precede the date of the most current application by 24, 48 or 72 hours when the application date immediately follows a holiday, weekend, or a three-day weekend, respectively; or
3. In OAA, AD, AB and ADC, the effective date of the first categorical payment should not be more than two weeks prior to the date the Authorization of Award is received in the State Office. Authorizations received more than two weeks after the effective date will be paid, unless there is an extremely long period between the effective date and the date the authorization was received. The circumstances involved will be reviewed with the CPWD.

An Advance Payment check constitutes the first categorical payment, and is therefor subject to the preceding policies. The Advance Payment check may be issued on or after the effective date of the grant; the date typed on the face of the check may be later than the effective date, but not earlier. See section 2310.1 for Advance Payments.



UTAH

Utah-DSS-APA  
Volume III

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5050 DATE OF GRANT ENTITLEMENT

1. The grant for a financial assistance applicant shall begin on the date of application IF:
  - a. He is determined eligible during the verification process.  
and
  - b. He was eligible on the date of application.
2. When the District Assistance Payments Office determines, during the verification process, that the financial assistance applicant was ineligible on the date of application but later became eligible, the grant shall begin on the date the applicant becomes eligible. This paragraph applies in those instances where the application was not denied.

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PAYMENT

The Department of Social Services makes payments in two general areas. Payments are made directly to vendors on the basis of claims submitted, such as in the case of funeral claims, payments to examiners in the aid to the blind and remedial eye care, and for examinations of disability and incapacity in the aid to the disabled and aid to dependent children programs.

The procedures in this chapter are concerned primarily with the payment of assistance grants to approved applicants and recipients. The certification of the county department of social services is the basis upon which the Department of Social Services issues assistance warrants to recipients or takes other action in connection with the payment of assistance. The certification by the county department of social services is the basis upon which the Department of Social Services issues orders to the State Comptroller to write warrants.

NEW APPROVALS AND REINSTATEMENTSEffective Date

New approvals and reinstatements for assistance grants (OAA, AB, AD, ADC, A&C-FC and Cuban Relief) are effective as of the date of application or the date the applicant becomes eligible for assistance, whichever is later. The phrase "becomes eligible" means the date the applicant actually becomes eligible by meeting the program requirements, not the date the county department completes its evaluation and determines that he meets the eligibility requirements.

Exception: In the ADC Foster Care program the effective date is the date the child is placed in the foster care arrangement.

Cut-Off Date

The county department shall submit its recommendation for rejection or approval immediately following the determination of the applicant's eligibility for assistance. Recommendations are processed by the Central Office as soon as received.

Date Of Payment

Generally, the initial assistance warrant for a newly approved or reinstated applicant is mailed within 7 working days from the date the Change of Status - Family Unit Eligibility, AA-4145-0, is received in the Central Office.

The second warrant will usually be received by the recipient on or about the 10th of the subsequent month. The warrant for the third month is mailed on the same date as all other regularly issued monthly assistance warrants.



**5120 Authorization of Current Payments**

Once eligibility for public assistance has been established, payment will be authorized to begin the current month if the authorization document can be mailed to the State Office by the 20th day of the month. If the authorization document cannot be mailed in by the 20th of the current month, payment is authorized to begin the following month (See policies regarding retroactive payments). Adjustments in public assistance payments may be authorized to take effect the following month if the authorization document can be mailed to the State Office by the 20th day of the current month. If the authorization document cannot be mailed by the 20th of the current month, the change cannot be made effective until the second subsequent month.

**5130 Authorization of Retroactive Assistance**

**5131 1. Retroactive assistance payments to recipients are to be authorized:**

- a. to correct an agency error which caused a recipient to be deprived of at least \$1.00 per month in assistance. A retroactive payment can be authorized for the amount of the error, but cannot cover a period of more than 12 months time prior to the current month, except to implement a decision made as the result of an appeal.
- b. to compensate for the time lag between the date of application and the month of initial payment. A single retroactive payment is to be authorized to cover the amount of assistance the applicant should have received from the date of application to the effective month of approval, but cannot cover a period of more than 12 months time prior to the month of approval.
- c. to compensate for the agency's erroneous exclusion from an aid group of an eligible individual for whom assistance was requested. Apply instructions given above in paragraph b in these situations.

**2. Procedures to be used in authorizing retroactive initial payments to approved applicants. (See Systems and Procedures Manual for instructions for completing authorization form and supplement.)**

**a. currently eligible applicants**

When it is established that an applicant is eligible for assistance in the month the decision is being made, then the worker considers whether the applicant would have been eligible for the month during which he applied and for any months between application and approval. If the applicant is currently eligible and would have been eligible during the month he applied and subsequent month(s) prior to approval, a single retroactive payment can be made to begin with the date of application and to cover each month from application to the month of approval.

If the applicant is currently eligible but would not have been eligible during the month he applied, then the retroactive payment can be authorized to begin with the first day of the month in which eligibility was attained.

## POLICY

## PROCEDURE

- b. Otherwise the date of the application is the date the Declaration Form is received.

4. An applicant is entitled to assistance from the date of his request or the date the Declaration Form is received; whichever comes first, if he meets eligibility requirements according to DSSH Standards of Assistance.

- a. He is eligible for Medical Assistance without a separate application.

5. The applicant and all adults included in the application shall sign the Declaration Form before the application can be approved. If the illness prevents his signing the form, temporary payment up to 90 days may be made.

- a. This requirement may be waived when a medical and social evaluation as well as the worker's observation show that:

- 1) The applicant is unable to provide information or complete the Declaration Form and sign it; and
- 2) He dies within the period of presumptive eligibility, or
- 3) He fails to recover sufficiently to sign the Declaration Form at the end of the presumptive eligibility period.

- b. If the applicant's signature is waived, the signature of the person applying on his behalf will be accepted and this information noted in the record.

Extent of Medical Payments coverage is based on DSSH Medical Payments Program policies and income available during the retroactive period of coverage. Refer to MS 3436, Item 2, (Medical Assistance) Effective Date of Authorization for Medical Payment.

MS 3054, Emergency Assistance.



8/1/73

2141. Application Decisions

Decisions on applications or reapplications for assistance or benefits are classified as:

1. Grants - when need exists, according to department standards, and all other eligibility conditions of the program are met.
2. Denials - when need does not exist, according to department standards, or when one or more other eligibility conditions of the program are not met, or when the applicant cannot be located, or when the application is withdrawn by the applicant.
3. Other disposals - when an applicant for current and/or future assistance or benefits dies before completion of the investigation.

2141.1 Money Grant (AABD-ANFC)

Assistance shall be granted by district directors in the specified amount needed, according to department regulations, and continues until changed. Money payments are granted retroactively to the first day of the month of application if it can be established that all eligibility conditions were met at some point during that month.

In ANFC incapacity cases only, assistance may be granted provisionally, beginning with the first month of application when the following conditions are met:

1. Financial need exists;
2. Facts are available which in the opinion of the district director, support a decision that it is more probable than not that ANFC incapacity can be satisfactorily established within a reasonable period.

Assistance may be granted provisionally or continued, for a specified period, in accord with applicable regulations when eligibility criteria provide for additional time to meet specified conditions with regard to income and/or resources.

ARIZONA

THE APPLICATION PROCESS  
and CONTINUING ELIGIBILITY

AP Revision #72 (12/72)

3-208.1D  
3-208.2

3-208.1

- D. DPW-324 (Assistance Budget Worksheet and Certification Record): This form is completed on all cases prior to approval in order to establish the amount of grant each applicant in the assistance household is eligible for. The form will be completed according to instructions and the guides provided in A.P. Manual (3-1120 through 3-1129) and A.P. Exhibit XI-A, Uniform Assistance Plan for Recipients.
- E. The Case Record: In all cases being approved for assistance the case record will include completed copies of all the forms previously discussed and will note any follow-up actions which should be made. The date of the follow-up will also be noted on a DPW-99 (Reminder Card) if action is required prior to review date.
- F. Certification and Effective Date of Payment: Certification of an assistance grant shall be made by the County Director, Eligibility Supervisor, or if authorized, by the Eligibility Worker. The certifying person will complete the DPW-764 (Report of Application for Assistance) following the instructions given in the Administrative Manual. A grant once certified will continue regularly until there is bona fide reason for altering the amount, the recipient becomes ineligible, or requests discontinuance.

The effective date of the first payment shall be the month in which all eligibility conditions are met regardless of when the determination was made, providing a signed application for assistance was on file on or before that month. This does not preclude a person from applying in advance of a month in which his eligibility will be attained, e.g., reaches age 65, etc.

Note: When the effective date of the initial payment falls into a prior fiscal year the payment can be made only if administrative adjustment funds are available. The State Office will exercise final approval for certifying such payments.

2. Assistance Paid by Disbursing Order: DPW-705 (Disbursing Order and Claim) is the form used to authorize a vendor to supply a person with his immediate need as specified on the face of the order and to file this document as a claim against the State for reimbursement. See paragraph 4 of 3-208, Authorizing Assistance, for situations in which payment may be made by Disbursing Order.



KENTUCKY

COMMONWEALTH OF KENTUCKY

PUBLIC ASSISTANCE

MANUAL OF OPERATION

MTL-536

1000-1399

1150-1199

Application Process

Case Decision

1158-1164

R. 4/30/74

\*1158 Interpretation to the Client (continued)

- B. All AFDC payees must be reminded of the necessity of reporting changes in circumstances which would affect eligibility or amount of payment. In addition, the worker will advise the client of the EPSDT program and of the availability of family planning services for all recipients of child bearing age.

\*1161 Effective Dates. Unless the applicant is currently included as a member of the assistance group in an AFDC case, the effective date for a money payment is entered on the form PA-62.0 as the month of application if all eligibility requirements are met as of that month. Payment for the month of authorization will be made immediately. Retroactive payments will be received at a later date. The effective date for medical assistance is entered as the third month prior to the application month if all eligibility requirements were met as of that date.

- A. Application by Member of AFDC Group. If the applicant, previously included in an AFDC case, is applying for a child for whom assistance has not previously been granted, payment for the month of application and subsequent month(s) until effective date of removal from the AFDC case is authorized by PA-62BP. Payments are computed as follows:
1. Prepare PA-30 for applicant and new member(s) to authorize continuing payment based on current living arrangement.
  2. Prepare PA-30 for new member(s) only, based on current living arrangement and recognizing any income available to this member(s). Prepare PA-62BP to authorize this amount for month of application and any subsequent month prior to effective date of continuing payment.

\*1164 Completion and Submission of Necessary Forms

- A. Authorizations for Action on Applications are made on Form PA-62, PA-62M or PA-62.0. In order that the application process can be completed promptly and the applicant receive his check and/or ID Card at the earliest possible date, it is imperative that authorizations be submitted by PA-92, Transmittal Sheet, uniformly throughout the month.

If an applicant meets all conditions of eligibility the month he makes application, he is certified effective the month he applies. However, the worker may not sign the certification until the applicant meets all conditions of eligibility.

Payment may be authorized for the month subsequent to application at whatever time in the month all conditions of eligibility are met. No certification may be made effective for a prior month except those resulting from a hearing or to correct a county error in discontinuing assistance.

When eligibility for AABD is determined by the simplified method, the worker will within 30 days after certification of eligibility interview the client to determine if any additional services are indicated. During this interview, the worker also explores any potential resources for which the client may be eligible and insures that the client understands his rights and responsibilities. The service interview is recorded in the narrative section.

446.3 Certification of Ineligibility. When an applicant is ineligible, the worker contacts the applicant with respect to his ineligibility, explains the reason, and advises him that he will receive a written notice (ABCD-37-d) and if he is dissatisfied with the action taken he may request a fair hearing within the period of time specified in the written notice.

Form ABCD-105, if available, or Forms ABCD-105X with Form A, B, or D-19 are submitted to the State Office denying the application.

If the application is denied at intake, the Form ABCD-37-d is filled out and presented with an explanation before the applicant leaves the office.

446.4 Cancellation of Application. If the applicant is unwilling to establish his eligibility, his application is cancelled. No action, other than cancellation, is possible on an unsigned application. A withdrawal is reported as a cancellation.

Form ABCD-37-d, Notice to Client, worded to fit the special circumstances, is sent to the applicant, or nearest relative except in case of death, a letter is substituted for the form.

An application is cancelled under any of the following circumstances:

- a. Death prior to certification.
- b. Removal from address given by the applicant and attempt to locate fails.
- c. Correction of error. For example, an application for assistance may have been improperly made by a client who is already receiving.



8) Procedures for implementation of vendor payments

The agency shall carry out the following:

- a) Obtain the participation of the recipient to the extent possible and feasible.
- b) Verify with the vendor who will receive the payment, the amount, time of issuance of payment, etc.
- c) Complete the case action sheet identifying which budget items are vendor payments.
- d) Obtain proper authorization on the case action sheet.
- e) Refer the recipient and/or family to social services.
- f) Inform the recipient of his right to a fair hearing, with respect to a vendor payment decision.
- g) Establish a control to facilitate meeting the 3-month review requirement.
- h) Review the need for vendor payments at 3-month intervals for as long as the vendor payments are necessary within time limitations.
- i) Prepare a separate vendor payment payroll or indicate on the regular payroll the portion paid by vendor payment.

3. PAYMENT PROCEDURES

a. Date of Payment

- 1) See I-C-1 and I-C-2 - Rule PW-PA 20.11 (3).
- 2) In addition there is this requirement:

If the amount of the monthly grant is \$25.00 or less, the agency shall make the payment in one installment.

b. Initial Payment

- 1) Made from the effective date - the first day of the month of application if the applicant meets all eligibility requirements on that date and is entitled to receive aid. (If all eligibility requirements are not met on the first day of the month of application, the effective date becomes the date that all eligibility requirements are met.)
- 2) In BA and DA the effective date is always a date prior to the date the State Review Panel found the applicant blind or disabled.

CONCLUSION

The District Court was within the sound exercise of its discretion when it determined that the Commissioner was barred by his own inequitable position from seeking relief from judgment. Even were the Commissioner not precluded from relief by his "unclean hands," he has not made a clear showing that a substantial change in circumstances has occurred which causes him oppressive and unforeseen hardship while the harm to the plaintiffs which the original decree was designed to foreclose has disappeared. Therefore, the decision of the District Court denying the motion for relief from judgment under Rule 60(b)(5) should be affirmed.

Respectfully Submitted,

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CERTIFICATION

Please take notice that I have this 27th day of October, 1974, filed the original of the Appellees' Brief with the United States Circuit Court of Appeals for the Second Circuit by depositing the same in the United States mails, postage prepaid. I hereby certify that on this same date I mailed a copy of said Brief in the United States Mails, postage prepaid to Edmund C. Walsh, Esquire, Assistant Attorney General, 90 Brainard Road, Hartford, Connecticut 06114.

Marilyn Kaplan Katz

Marilyn Kaplan Katz

Attorney for Plaintiffs-Appellees